

AN ORDINANCE 101573

**AUTHORIZING THE EXECUTION OF AN AGREEMENT
WITH NORTH EAST INDEPENDENT SCHOOL DISTRICT
(NEISD) FOR THE PROVISION OF ADULT EDUCATION
AND LITERACY PROGRAMS BEGINNING OCTOBER 23,
2005 AT THE COLONEL VICTOR J. FERRARI
COMMUNITY FAMILY RESOURCE AND LEARNING
CENTER.**

* * * * *

WHEREAS, the City of San Antonio (City) promotes and supports adult education and literacy, and also provides social and human development services to the community; and

WHEREAS, City currently owns and operates seven Community Family Resource and Learning Centers that are strategically located in order to enhance accessibility of social and human development services to targeted neighborhoods; and

WHEREAS, City is now opening its eighth center, which is called the Colonel Victor J. Ferrari Community Family Resource Learning Center; and

WHEREAS, the North East Independent School District (NEISD) has offered to provide adult education and literacy programs at the Colonel Victor J. Ferrari Community Family Resource Learning Center; and

WHEREAS, it is now necessary to authorize the execution of an agreement with NEISD in order to provide educational services and to promote the public purpose of family, social and economic stability; **NOW THEREFORE:**


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Section 1. The City Manager, or his designee, or the Director of the Department of Community Initiatives, is authorized to execute an agreement with the North East Independent School District (NEISD) for the provision of adult education and literacy programs at the Colonel Victor J. Ferrari Community Family Resource and Learning Center, which is located at 107 W. Rampart, San Antonio, Texas, for the period beginning October 23, 2005. A copy of said agreement in substantially correct form is attached hereto and incorporated herein for all purposes as Attachment I.

Section 2. This ordinance shall become effective on and after October 30, 2005.

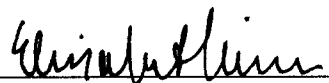
PASSED AND APPROVED this 20th day of October 2005.

ATTEST:


City Clerk


MAYOR
PHIL HARDBERGER

APPROVED AS TO FORM:


for City Attorney

**AGREEMENT BETWEEN THE NORTHEAST INDEPENDENT SCHOOL DISTRICT
AND THE CITY OF SAN ANTONIO IN CONNECTION WITH THE ADULT
EDUCATION PROGRAM**

This Agreement is made by and between the City of San Antonio, (hereinafter referred to as "CITY") a Texas Municipal Corporation, acting by and through its Director of the Department of Community Initiatives pursuant to Ordinance No. _____ dated _____ and the Northeast Independent School District (hereinafter referred to as "CONTRACTOR").

In consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby enter into this Agreement for the limited purposes and upon the terms, provisions, and conditions set forth.

I. SCOPE OF AGREEMENT AND LIMITATIONS OF AUTHORITY

- 1.1 The purpose of this Agreement is to retain the services of a CONTRACTOR to provide literacy and adult education related services to individuals in the San Antonio area at Colonel Victor J. Ferrari Community Family Resource and Learning Center.
- 1.2 In the performance of the work, duties and obligations hereunder, it is mutually understood and agreed that CONTRACTOR shall not be considered an employee of CITY. Accordingly, CITY shall not have control, direction and/or dominion over CONTRACTOR other than the terms of this Agreement; however, CONTRACTOR shall be responsible for performing the services contemplated hereunder in a good manner and the work shall be conducted in strict accordance with currently approved practices.
- 1.3 CONTRACTOR has no authority to act for or on behalf of CITY except as provided for in this Agreement, and no other authority, power or use is granted or implied.
- 1.4 CONTRACTOR may not incur any debt, obligation, expense, or liability of any kind on behalf of CITY without said party's expressed written permission.
- 1.5 CONTRACTOR has no exclusive rights or benefits other than those set forth herein.
- 1.6 CITY is neither responsible nor liable for any misrepresentations, errors, omissions of any kind, negligence, carelessness, or other problems or disputes which CONTRACTOR may cause or be involved in or that may arise during the term of this Agreement.

II. TERM

- 2.1 The term of this Agreement shall be from October 23, 2005 and shall continue in full effect unless terminated as provided in Article IV of this Agreement.

III. DUTIES

3.1 Duties of CONTRACTOR:

a) CONTRACTOR agrees to provide the CITY with the following services:

- 1) Provide Literacy and related Adult Education services that may include English as a Second Language, Adult Basic Education and General Education Development (GED);
- 2) Provide instructors for Adult Education services; Provide the curriculum and instructional materials to be used by instructional staff of CONTRACTOR;
- 3) Conduct student registration, including base-line assessment. Conduct progress assessment; within structure of classroom instruction;
- 4) Provide materials for GED in-house practice exams within the structure of classroom instruction;
- 5) Conduct Professional Development training for CONTRACTOR'S instructional and clerical staff;
- 6) Ensure that CONTRACTOR'S employees comply with City policies and rules of the Community Family Resource and Learning Centers, NEISD policies and procedures, and Texas Education Agency regulations and guidelines for Adult Education;
- 7) Provide the above-described services in a prompt, courteous, and professional manner;
- 8) Provide direct supervision of CONTRACTOR'S employees and program implementation;
- 9) Perform all TEA-required data entry for CONTRACTOR'S Adult Education services at NEISD central location;
- 10) Provide TEA performance measure report to the CITY by the tenth of each month.
- 11) Provide vouchers to CITY for instructor recommended students needing financial assistance for GED administrative testing within CONTRACTOR'S GED fund budget allocation and overall allocation to other NEISD GED students.

3.2 Duties of CITY:

a) City agrees to provide the CONTRACTOR with the following services:

- 1) Provide instructional classroom space to accommodate 15-20 adult students per classroom for CONTRACTOR-sponsored classes that shall maintain a minimum average daily attendance of 10.
- 2) Conduct outreach to recruit individuals for Literacy and Adult Education classes;
- 3) Collaborate with CONTRACTOR to promote adult literacy programs including the CITY's programs and supportive services;
- 4) Monitor the services provided by CONTRACTOR in this Agreement through CONTRACTOR-provided monthly reports.
- 5) Pay for the GED administrative testing fees for students attending classes at the CFRLCs or other NEISD GED sites within CONTRACTOR'S GED fund budget allocation,
- 6) Follow NEISD and City policies by prohibiting smoking on the premises to include parking lots.

IV. TERMINATION

- 4.1 This Agreement may be terminated by either (1) written agreement of both parties; (2) by unilateral written notice of termination at least 30 days prior to the beginning of any scheduled course; or (3) immediately upon the breach of this Agreement. A breach of this Agreement includes, but is not limited to, a violation of the policies and rules of CITY or its agent(s) by misrepresentations or false statements by CONTRACTOR, non-performance of its duties, or upon the occurrence of a conflict of interest between the CONTRACTOR and CITY or its agent(s).

V. TEXAS TORT CLAIMS ACT

- 5.1 CONTRACTOR and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practices and Remedies Code, Section 101.001 et, seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

VI. VENUE

- 6.1 This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

VII. RELATIONSHIP OF PARTIES

- 7.1 CITY and CONTRACTOR mutually agree that CONTRACTOR, acts in the capacity of an independent contractor and that nothing contained herein shall be construed by either party hereto or by any third party as creating the relationship of principal and

agent, partners, joint venture or any other similar such relationship between the parties hereto.

- 7.2 CITY and CONTRACTOR understand and agree that neither party to this Agreement has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

VIII. CONFLICT OF INTEREST

- 8.1 CONTRACTOR acknowledges that it is informed that Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: A CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 8.2 Pursuant to the Section 8.1 of this Agreement, CONTRACTOR warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

IX. NOTICES

- 9.1 For purposes of this Agreement, all official communications and notices between the parties shall be deemed sufficient if in writing, mailed, certified mail, postage prepaid, to the addresses set forth below:

CITY
City of San Antonio
ATTN: Director, Community Initiatives
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR
Becky Stoughton
Director, NEISD Adult and
Community Education
10333 Broadway
San Antonio, Texas 78217

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

X. CONFIDENTIALITY

- 10.1 City and the CONTRACTOR hereby agree to maintain the confidentiality of any record directly related to or generated as a result of this Agreement in accordance with all Local, State, and Federal laws.

XI. SEVERABILITY

- 11.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never contained herein; it is also the intention of the parties hereto that in lieu of each provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible, legal, valid and enforceable.

XII. TEXAS LAW TO APPLY

- 12.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas.

XIII. CAPTIONS

- 13.1 The captions contained in this agreement are for convenience of reference only, and in no way limit or enlarge the terms or conditions of this Agreement.

XIV. COMPLIANCE WITH LAWS AND REGULATIONS

- 14.1 All of the work performed under this Agreement by the participants shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.

XV. ENTIRE AGREEMENT

- 15.1 This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by both parties.

Execution on the _____ day of _____, 2005.

CITY OF SAN ANTONIO:

NORTH EAST INDEPENDENT
SCHOOL DISTRICT

Dennis J. Campa, Director
Department of Community Initiatives
City of San Antonio

Richard A. Middleton
Superintendent, NEISD
8961 Tesoro Drive
San Antonio, Texas 78217

Approved As To Form:

City Attorney